

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

**I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

ENV-2024-CHC-
Under The Resource Management Act
1991 (the **Act**)
In the Matter of an appeal pursuant to clause
14 of schedule 1 of the Act,
concerning the Central Otago
District Plan – Plan Change 19
Between **FULTON HOGAN LIMITED**
Appellant
And **CENTRAL OTAGO DISTRICT**
COUNCIL
Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION
ON PLAN CHANGE 19**



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**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION
ON PLAN CHANGE 19**

To: The Registrar

Environment Court

Christchurch Registry

1. Fulton Hogan Limited (**Fulton Hogan**) appeals against a decision of the Central Otago District Council Plan Change 19 (**PC19**).
2. Fulton Hogan made a submission regarding the Decision (OS 164)
3. Fulton Hogan is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. Fulton Hogan received notice of the decision on 27 June 2024.
5. The decision was made by Central Otago District Council.
6. The decision Fulton Hogan is appealing is:
 - (a) PC19 Hearing Panel's Report section 5.9.2 which decided not to identify a Future Growth Overlay (**FGO**) over Parkburn Quarry at 930 Luggate-Cromwell Road (**Site**).
 - (b) The decision not to amend the PC19 provisions to give effect to the submission put before them due to the existence of Plan Change 21 (**PC21**).
7. The reasons for this appeal are:
 - (a) The Site is presently zoned Rural Resource Area and is an operating aggregate quarry. Part of the Site subject to Scheduled Activity 25A which allows gravel extraction to occur.
 - (b) The whole of the Site is suitable for residential and urban development.
 - (c) Fulton Hogan's original submission was consistent with the Objectives and Policies for the Medium Density and Low-Density

Residential Zones to provide for a higher density of development on larger sites and to be well connected into the surrounding area.

- (d) The Panel recognised that Central Otago District is an area experiencing rapid growth. To ensure the CODC can meet housing demand, Low Density and Medium Density Residential zoning with a FGO should be placed on the Site.
- (e) Cromwell is an urban environment as defined by the National Policy Statement Urban Development 2020. The Cromwell Spatial Plan does not implement the National Policy Statement Urban Development 2020.
- (f) The Decision fails to give sufficient weight to the Site's appropriateness for future growth. The Site borders the Pisa Moorings to the south and is close to the Cromwell township. It is part of the same urban environment and a logical extension of Pisa Moorings and should be identified for future development.
- (g) Rezoning the Site for residential development is required to enable the Council to meet its obligations under the NPS UD 2020.
- (h) The Panel erred in not making a decision on the substance of Fulton Hogan's submission in PC 19. Although the Site is also subject to a separate CODC plan change process, the Panel was obliged to determine the merits of the submission on PC 19. It did not do so.
- (i) The majority of Site is not subject to the National Policy Statement for Highly Productive Land. As the Site is currently a quarry, the soil on the small area of LUC3 land considered highly productive under the NPS HPL has been removed. SA25A enables any remaining soil to be removed. The benefits of rezoning far outweigh the cost of losing highly productive land, which does not exist as a matter of objective fact.

8. Fulton Hogan seek the following relief:

- (a) Accept Fulton Hogan's original submission and place a future growth overlay area on Parkburn Quarry with underlying Low Density Residential and Medium Density Residential.

9. The following documents are attached to this notice:

- (a) A copy of Fulton Hogan's original submission;
- (b) A copy of part of the decision; and
- (c) A list of names and addresses of persons to be served with a copy of this notice.



Phil Page / Hannah Perkin

Solicitor for the Appellant

Dated 9 August 2024

Service details for Appellant:

Attention	Phil Page / Hannah Perkin
Address	Galloway Cook Allan Lawyers 123 Vogel Street, Level 2 DUNEDIN 9054
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Advice to Recipients of Copy of Notice

How to Become a Party to Proceedings

You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court, and serve copies on the other parties, within 15 working days after the period for lodging a notice of appeal ends. Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

How to Obtain Copies of Documents Relating to Appeal

The copy of this notice served on you does not attach a copy of the relevant decision. These documents may be obtained, on request, from the Appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington or Christchurch.

RECEIVED
02/09/2022
CODC

SUBMISSION ON A PUBLICLY NOTIFIED PROPOSAL FOR PLAN (VARIATION)

TO: Central Otago District Council (“**CODC**”)

NAME OF SUBMITTER: Fulton Hogan (“**Submitter**”)

ADDRESS FOR SERVICE: As specified below

Introduction

1. This is a submission on proposed plan change referred to as Plan Change 19 (PC19) which involves the rezoning of land for residential use.
2. CODC has explained the purpose of the Plan Change as follows:

Plan Change 19 (PC19) has been driven by the direction set out in the Vincent and Cromwell Spatial Plans. The spatial plans have been prepared by Central Otago District Council to respond to demand for residential land and housing affordability concerns in the District, and to plan for the anticipated growth over the next 30 years.

PC19 is also part of the Council’s District Plan Review programme, and therefore seeks to undertake a comprehensive review of the current provisions applying in residential areas. It therefore applies to all existing Residential Resource Areas, including those outside areas covered in the spatial plans.

...

A Future Growth Overlay is also applied to areas identified for residential development in Stages 2 & 3 of the Vincent Spatial Plan. The Overlay does not alter the existing zoning, but signals areas where future growth is anticipated to be accommodated, subject to future more detailed consideration, particularly in terms of servicing.

Specific provisions of the Plan Change that the submission relates to

3. The Submitter has an interest in the entire Plan Change, and in particular the identification of areas subject to the Future Growth Overlay (**FGO**) and location of residential zones.
4. The Submitter owns the land legally described as:
 - Section 64-65 Block IV Wakefield Survey District (WSD) as contained in Title OT10B/1452 (67.8380ha);
 - Part Section 62-63 Block IV WSD and section 1 Survey Office Plan (SOP) 365897 and section 4 SOP 557380 as contained in Title 1019401 (50.3315 ha).
5. The street address for the property is 922 Luggate-Cromwell Road (SH 6), Cromwell. The property is 118 hectares in area and operates as working gravel quarry and yard based industrial activities. The property is locally known as “Parkburn” and is herein referred to as “Parkburn land”.
6. The Submitter supports:

- (a) The Low Density Residential and Medium Density Residential provisions, zones and guidelines; and
- (b) The inclusion of the FGO areas;

but considers the FGO mapping or a mix of Low and Medium Density Residential Zoning should apply to the Parkburn land.

No trade competition

- 7. The Submitter could not gain an advantage in trade competition through this submission.

Submission / Reasons for submission

Part 2

- 8. It is appropriate to have regard to Part 2, given the context.
- 9. In particular:
 - (a) Section 5, and its elements that promote the use and development of natural and physical resources which enables people and communities to provide for their social, economic, and cultural well-being.
 - (b) Section 6(b), which requires that all persons exercising functions and powers under the RMA to recognise and provide for the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development. In that regard, the Plan Change could more effectively identify 'brownfield' sites for future urban land use and development and thereby protecting other areas of outstanding natural features and landscapes from inappropriate subdivision, use and development, whilst providing for the long-term growth of the District.
 - (c) Section 7(b) which requires that all persons exercising functions and powers under the RMA to have particular regard to the efficient use and development of natural and physical resources. It is inefficient to not identify 'brownfield' sites within Cromwell area for future growth development.

Section 32 and Cromwell Spatial Plan - Future Growth Overlay area

- 10. Plan Change 19 applies to all existing Residential Resource Areas, including those outside areas covered in the spatial plans. At paragraph 38 of the s32 report, it notes that the Cromwell Spatial Plan provides a coordinated approach to growth management for Cromwell over the next 30 years, and reflects the community's preferred option for providing for the anticipated growth within Cromwell and includes several residential zones at different densities, increased housing options and amenity through more intensified development within walkable distance from the town centre, design guidelines for residential development and provisions to support greenway retention and development.
- 11. Key issues that the Plan Change sought to address include the increased demand for new residential development in the District due to population growth, and the lack of variety in housing options, particularly for smaller housing types, which has a direct correlation with housing affordability issues.

12. At 59, the section 32 assessment acknowledges that there is a lack of vacant land to accommodate the predicted residential growth under the current District Plan. The identification of additional 'brownfield' sites suitable for future urban development should be identified within the FGO or by residential zoning, to futureproof additional areas for medium to long term growth.
13. The Cromwell Spatial Plan Geographical Scope includes the Pisa Moorings settlement, however not the extent of the Parkburn area. This may be due to the existing quarry operations in which Council did not consider the area for future growth at the time the Cromwell Spatial Plan was developed in 2019. The Parkburn area is located contiguously with the existing Pisa Moorings settlement and thereby a plausible location for consolidated urban growth which enables higher density objectives consistent with the PC19 provisions, and consistent with Objective 2 of the Cromwell Spatial Plan. The Parkburn area can be serviced and has good transportation linkages with the State Highway.
14. The identification of Parkburn as a FGO area or mix of residential zoning will enable an appropriate re-use of the industrial quarry to a revitalised brownfield urban development, subsequent to the ceding and rehabilitation of quarry operations. This recognition as a FGO area or mix of residential zoning, can also assist in alleviating the shortfall of urban zoned land within the Cromwell Ward, and assist the housing affordability issue by providing additional housing supply of varied typologies, consistent with PC19 provisions.
15. It is therefore submitted that the Parkburn area be considered and included within the FGO area or by a mix residential zoning on the GIS web mapping application.
16. It is also submitted that reference to the Parkburn area, as a FGO area or residential zone, should be included within the introduction of the Low-Density Residential Zone. If specific areas are to be listed in the introduction of the Medium Density Residential Zone chapter, it is submitted that the Parkburn area be included within such introduction.

Relief sought

17. The Submitter requests the following decision:
 - (a) Amend, vary or otherwise modify the PC19 provisions and the mapping of the FGOs to include the Parkburn land; and/or
 - (b) Amend, vary or otherwise modify the PC19 provisions and the mapping of the Low and Medium Density Residential Zones to include the Parkburn land; and
 - (c) Any consequential amendments to achieve (a) or (b) above.
18. Granting the primary relief sought will:
 - (a) achieve the sustainable management purpose of the RMA and otherwise meet the requirements of Part 2;
 - (b) enable the social, economic and cultural well-being of the community;
 - (c) meet the reasonably foreseeable needs of future generations;

- (d) represent the most appropriate means of exercising CODC's functions, having regard to the efficiency and effectiveness of the provisions relative to other means.

Wish to be heard

19. The Submitter wishes to be heard in support of its submission.
20. If others make similar submissions, the Submitter will consider presenting a joint case at any hearing.

DATED 2 September 2022

Carey Vivian

Electronic address for service of submitter: carey@vivianespie.co.nz

Telephone: (03) 441 4189

Postal address (or alternative method of service under section 352 of the Act):

Fulton Hogan Limited
C/- Vivian and Espie Limited
PO Box 2514
Whakatipu 9349
QUEENSTOWN

For: Carey Vivian

Decision Extract

340. The following rule is to be added to the LRZ chapter:

<u>LRZ-RX</u>	<u>Community facilities and shop</u>	
<u>Scheduled Activity No. 127 in Schedule 19.3.6</u>	<p><u>Activity Status: PER</u></p> <p><u>Where:</u></p> <p style="padding-left: 40px;">1. <u>No vehicular access is provided direct to Pisa Moorings Road.</u></p> <p><u>Where the activity complies with the following rule requirements:</u></p> <p><u>LRZ-S2, LRZ-S3, LRZ-S5 and LRZ-S6.</u></p>	<p><u>Activity status when compliance is not achieved with RX.1: DIS.</u></p> <p><u>Activity status when compliance with rule requirement(s) is not achieved: Refer to Rule Requirement Table.</u></p>

341. The text in Section 19.3.6 is to be amended as follows:

“Community facilities and Shop as defined in Section 18 is a permitted activity on the site identified as Scheduled Activity 127 subject to compliance with LRZ-S2 Height and LRZ-S3 Height in relation to boundary, LRZ-S5 Setback from road boundary and LRZ-S6 Setback from internal boundary Rule 7.3.6(iii) Bulk and Location of Buildings and Rule 12.7 District Wide Rules and Performance Standards and provided that no vehicular access is achieved direct to Pisa Moorings Road.”

342. In accordance with paragraph 6(d) of Minute 4 issued by the Hearings Panel, Ms White circulated a draft of the changes recommended in relation to the scheduled site to Mr Barr, in order for him to comment on the drafting. We understand that Mr Barr has indicated that he supports the revised drafting set out above.

343. The above recommendations are consistent with the s32AA assessment prepared by Ms White and contained in the Stage 2 s42A report (paras 257-258); and those set out earlier in relation to the amended approach to how the FGO applies. The Panel agrees and adopts the assessment by Ms White.

5.9.2 Parkburn Quarry (Fulton Hogan)

344. The Parkburn Quarry land is subject to PC21 and the Panel notes that Mr Vivian supported application of an FGO over this area through PC19. Ms White did not agree with him that that the identification of FGO over Parkburn land does not guarantee a positive outcome for PC21 (or any future plan change on any FGO land), as an FGO indicates that the zoning is anticipated (appropriate) once specific servicing constraints are addressed, and demand is established.

345. The Panel agrees with Ms White and considers it appropriate for PC 21 to take its course in terms of the merits of any future zoning on the site.

5.9.3 Wakefield Estates Limited (#138)

346. Wakefield Estates Limited (#138) seek the extension of LLRZ to land in the vicinity of Clark Road, Pisa Moorings, as shown in figure 17.



Figure 17

347. The submitter states that the land is currently unproductive rural land, and in their view has clear topographical boundaries in the form of steeply rising hills to the north and west and Council owned land to the south.

348. Ms Muir indicates in her evidence that the site could be serviced for water after 2029 when the Cromwell and Pisa Water schemes are combined, and a new water take consent has been approved by the Regional Council. This could be serviced for wastewater after 2029 after nitrogen removal and increased treatment capacity has been constructed.

List of names of persons to be served with this notice

Name	Address	Email Address
Ian Luke Dustin and the Dustin Family Trust	Unit 9, Papamoa Beach Road, Papamoa, 3118	iandustin14@gmail.com
Pisa Moorings Vineyard Limited and Pisa Village Development Limited	3 Frederick Street Wānaka 9305	craig@waveformplanning.co.nz campbell@chasurveyors.co.nz